

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

November 5, 1997

UNITED STATES OF AMERICA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324a Proceeding
)	
GOLDENWEST LAUNDRY AND)	OCAHO Case No. 97A00143
VALET SERVICES, INC.,)	
D/B/A EXPRESS VALET CLEANERS)	
Respondent.)	
)	

ORDER STRIKING RESPONDENT'S AFFIRMATIVE DEFENSES
AND MEMORANDUM OF PREHEARING CONFERENCE

On November 4, 1997 at 1:00 p.m. (EST), a telephonic prehearing conference was held in this matter. Appearing on behalf of the complainant was Monica M. Little, and on behalf of respondent was Marc Tow. The conference focused on the status of the complainant's motion to strike respondent's affirmative defenses, a schedule for further proceedings, and the ongoing settlement discussions.

On September 25, 1997, complainant filed a motion to strike the thirty-eight affirmative defenses contained in the respondent's answer. The rules of practice and procedure applicable to OCAHO proceedings, set out at 28 C.F.R. Part 68, require, inter alia, a statement of the facts supporting each affirmative defense. 28 C.F.R. § 68.9(c)(2). Respondent has failed to set out facts in support of any of thirty-eight proposed affirmative defenses. Additionally, an affirmative defense must be supported by a viable legal theory. Defenses such as lack of consideration, comparative negligence, indemnification, duress, breach of warranty, fraud, mistake, novation, unjust enrichment, parole evidence, ratification, and other tort or contract defenses have no prima facie applicability to an action to enforce the provisions of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1324a (INA), which renders it unlawful after November 6, 1986 to hire individuals for employment in the United States without complying with its provisions.

Therefore, complainant's motion to strike the affirmative defenses is granted. Respondent shall have ten (10) days from the date of the prehearing conference to file an amended answer setting out any affirmative defenses in accordance with the governing rules.

Concerning discovery requests, complainant agreed to submit its written discovery requests within thirty (30) days of the prehearing conference. Respondent shall have sixty (60) days from the prehearing conference within which to initiate its written discovery requests.

The respondent is encouraged to send a written response to the complainant's latest settlement offer, and both parties are strongly encouraged to engage in a good faith settlement dialog.

An additional prehearing conference will be scheduled after ninety (90) days if necessary.

SO ORDERED.

Dated and entered this 5th day of November, 1997.

Ellen K. Thomas
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of November, 1997, I have served copies of the foregoing Order Striking Respondent's Affirmative Defenses and Memorandum of Prehearing Conference on the following individuals at the addresses indicated:

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